

REMARKS

Claims 1 through 18 were presented for consideration. Claims 1 through 6 and 8 through 18 remain pending upon entry of the instant amendment. Claim 7 has been cancelled.

Applicant notes with appreciation the detailed review of the application by the Examiner. The application has been amended to obviate the asserted objections.

The Office Action objects to the disclosure. The specification and claims have been amended to use the term "support layer" for consistency and to provide the proper antecedent basis for the claimed terminology. The specification has also been amended to capitalize the trademark LYCRA and add the generic terminology spandex. As such, reconsideration and withdrawal of the objection to the specification are respectfully requested.

The Office Action objects to claims 1 through 18. Claims 5 and 17 have been amended to delete the term "firm." As such, reconsideration and withdrawal of the objection to claims 5 and 17 are respectfully requested.

The Office Action asserts there is no support in the specification for the term "support material" in claim 6. The paragraph beginning at page 5, line 19 of the specification has been amended to provide support for "support material". As such, reconsideration and withdrawal of the objection to claim 6 are respectfully requested.

The Office Action objects to claim 7 as not further limiting the claims. Claim 7 has been cancelled rendering the objection to claim 7 moot.

Claims 1 and 8 have been amended to use the term "support layer" as discussed above with regard to the amendments to the specification. As such, reconsideration and withdrawal of the objection to claims 1 and 8 are respectfully requested.

Claims 1, 9, and 14 have been amended to delete "wherein the undergarment provides a balance of comfort, support and sensual appeal" for further clarification.

Claim 1 has also been amended to delete "inner" for further clarification.

The Office Action asserts there is no support in the specification for the term "seamless transparent layer" or "seamless support layer" in claims 9, 11, and 12. The paragraph beginning at page 5, line 1 and the paragraph beginning at page 5, line 19 of the specification have been amended to provide proper support for the terms "seamless transparent layer" and "seamless support layer". As such, reconsideration and withdrawal of the objection to claims 9, 11, and 12 are respectfully requested.

The Office Action asserts there is no support in the specification for the "seamless connection" in claim 14. Claim 14 has been amended to delete the "seamless connection" limitation. As such, reconsideration and withdrawal of the objection to claim 14 are respectfully requested.

The Office Action rejects claim 5 under 35 U.S.C. §112, second paragraph. Claim 5 has been amended to provide proper antecedent basis. Reconsideration and withdrawal of the rejection to claim 5 are requested.

The Office Action rejects claims 1, 2, and 6 through 18 under 35 U.S.C. §102(b) over U.S. Patent No. 5,154,659 to Gluckin ("Gluckin"). The Office Action rejects claims 3 through 5 under 35 USC §103(a) as being unpatentable over Gluckin.

Applicants respectfully traverse these rejections.

Independent claim 1 requires a transparent layer.

Gluckin provides for a second blank "be[ing] of stretchable body cloth which

could be polyester lace, shadow cloth, cotton or the like". See col. 3, lines 40-43. Polyester lace, shadow cloth, and cotton are not transparent. Moreover, the Office Action concedes Gluckin does not specifically disclose the outer layer as being transparent. See page 24, lines 19-20 of the Office Action.

Therefore, a transparent layer as recited by claim 1 is not disclosed or suggested by Gluckin.

Claims 2 through 6 and 8 depend from claim 1, and, thus, are also not disclosed or suggested by Gluckin.

Furthermore, dependent claim 3 recites the undergarment of claim 1 and further recites that the support layer is a transparent material.

The Office Action asserts it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to use a transparent or lace cotton material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. This type of "design choice" rejection has been criticized by the Court of Appeals for the Federal Circuit. In the case of *In re Chu*, 36 USPQ2d 1089 (Fed. Cir. 1995) (citing *In re Gal*, 25 USPQ2d 1076 (Fed. Cir. 1992)), the Federal Circuit reversed a Board of Appeals rejection based on design choice and held that a "finding of 'obvious design choice' precluded were the claimed structure and function it performs are different from the prior art." In the present case, the transparent material recited in claim 3 provides visibility through the transparent material. For example, designs or patterns provided on the adhesive layer may be visible through the transparent material. See page 6, lines 25-23 of the Application. The lace provided for in Gluckin is not transparent, as discussed above for claim 1, and functions to impart a desired aesthetic effect by the lace layer itself rather than a separate aesthetic effect adjacent to the lace layer. Thus, the transparent material provided for in claim 3 has a different structure and function as compared to the lace of

Gluckin, and, thus, is not an obvious design choice.

Moreover, Gluckin teaches away from transparent material by providing a non-plastic content fabric of "cotton" or "tricot". See col. 3, lines 18-19. Cotton and tricot are not and cannot form a transparent material. Thus, Gluckin does not disclose or suggest a support layer that is a transparent material as recited by claim 3.

Dependent claim 4 depends on dependent claim 3, which further depends on independent claim 1, and claim 5 depends on claim 4, which further depends on claim 3, and, thus, are also not disclosed or suggested by Gluckin.

Independent claim 9 provides a seamless transparent layer and a seamless support layer.

Gluckin provides for a second blank "be[ing] of stretchable body cloth which could be polyester lace, shadow cloth, cotton or the like". See col. 3, lines 40-43. Polyester lace, shadow cloth, and cotton are not transparent. Moreover, the Office Action concedes Gluckin does not specifically disclose the outer layer as being transparent.

In addition, Gluckin provides for a center seam, as seen in Fig. 2. See col. 3, line 4. Gluckin further provides "each of the brassiere side panels 70 and 72 is identically constructed". Therefore, Gluckin provides two non-plastic content fabric layers, two heat sensitive polyester plastic-fill layers, and two second blanks connected by the center seam, rather than a seamless transparent layer and a seamless support layer as recited by claim 9.

Therefore, a seamless transparent layer and a seamless support layer as recited by claim 9 are not disclosed or suggested by Gluckin.

Claims 10 through 13 depend from claim 9, and, thus, are also not disclosed or

suggested by Gluckin.

Claim 14 provides adhering or fusing the support layer with the adhesive or fusing layer to a transparent layer to provide seamless connection.

Gluckin provides for a second blank "be[ing] of stretchable body cloth which could be polyester lace, shadow cloth, cotton or the like". See col. 3, lines 40-43. Gluckin further provides second blank be "placed on the lower heated platen 94 of appropriate heat sealer 96 and is then covered by the prepared die cut blank 86 in sandwich fashion". See col. 3, lines 45-47. Polyester lace, shadow cloth, and cotton are not transparent. Moreover, the Office Action concedes Gluckin does not specifically disclose the outer layer as being transparent.

Therefore, adhering or fusing the support layer with the adhesive or fusing layer to a transparent layer to provide seamless connection as recited by claim 14 is not disclosed or suggested by Gluckin.

Claims 15 through 18 depend from claim 14, and, thus, are also not disclosed or suggested by Gluckin.


Accordingly, Applicants respectfully request favorable reconsideration and withdrawal of the rejections of these claims.

In view of the foregoing, Applicants respectfully submit that the present application is in condition for allowance. If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

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